

Susan A. Musser, DC Bar # 1531486  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Tel: (202) 326-2122  
[smusser@ftc.gov](mailto:smusser@ftc.gov)

*Attorney for Plaintiff Federal Trade Commission*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

FEDERAL TRADE COMMISSION,  
STATE OF ARIZONA,  
STATE OF CALIFORNIA,  
DISTRICT OF COLUMBIA,  
STATE OF ILLINOIS,  
STATE OF MARYLAND,  
STATE OF NEVADA,  
STATE OF NEW MEXICO,  
STATE OF OREGON, and  
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and  
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**DECLARATION OF SUSAN A.  
MUSSER IN SUPPORT OF  
PLAINTIFFS' MOTION *IN LIMINE* TO  
EXCLUDE EVIDENCE OR  
ARGUMENT RELATING TO  
DEFENDANTS' PROPOSED  
DIVESTITURE**

I, Susan A. Musser, declare as follows:

1. I am Chief Trial Counsel for the Federal Trade Commission, Bureau of Competition. I am over the age of 18 and counsel of record for Plaintiff Federal Trade Commission in the above-captioned action. I make this declaration based on personal

MUSSER DECLARATION ISO MIL RE PROPOSED DIVESTITURE

knowledge. I make this declaration in support of Plaintiffs' Motion *in Limine* to Exclude Evidence or Argument Relating to Defendants' Proposed Divestiture.

2. Appendix A, attached to this declaration, contains true and accurate quotes from deposition transcripts and 30(b)(6) subpoenas. Plaintiffs can provide the Court with copies of the underlying sources if requested.

3. Attached to this declaration as Exhibit A is a true and correct copy of the Special Master's Initial Order on Plaintiff's Motion to Compel in *Colorado v. The Kroger Co.*, Docket No. 24CV30459 (District Court, City and County of Denver, Colorado Aug. 12, 2024).

4. Attached to this declaration as Exhibit B is a true and correct copy of Kroger's Opposition to Complaint Counsel's Renewed Motion to Compel in *In re Kroger Co.*, Docket No. 9428 (FTC June 5, 2024).

5. Attached to this declaration as Exhibit C is a true and correct copy of the Administrative Law Judge's Order Denying Complaint Counsel's Motion to Compel Production of Documents and Revised Privilege Log in *In re Kroger Co.*, Docket No. 9428 (FTC June 11, 2024).

6. Attached to this declaration as Exhibit D is a true and correct copy of Exhibit DX2495, Defendants' Expert Report of Daniel Galante (July 1, 2024)

7. Attached to this declaration as Exhibit E is a true and correct copy of Albertsons' Opposition to Complaint Counsel's Motion to Compel in *In re Kroger Co.*, Docket No. 9428 (FTC May 17, 2024).

8. Attached to this declaration as Exhibit F is a true and correct copy of Kroger's Answer and Defenses in *In re Kroger Co.*, Docket No. 9428 (FTC March 11, 2024).

9. Attached to this declaration as Exhibit G is a true and correct copy of Albertsons'

Answer and Affirmative Defenses in *In re Kroger Co.*, Docket No. 9428 (FTC March 11, 2024).

10. Attached to this declaration as Exhibit H is a true and correct copy of Exhibit PX3068, a document produced by C&S in this matter.

11. Attached to this declaration as Exhibit I is a true and correct copy of Exhibit PX6253, a PDF of a news release from Kroger's website, <https://ir.kroger.com/news/news-details/2024/Kroger-Albertsons-Companies-and-CS-Wholesale-Grocers-LLC-Announce-an-Updated-and-Expanded-Divestiture-Plan/default.aspx>.

12. Attached to this declaration as Exhibit J is a true and correct copy of Kroger's Responses and Objections to Complaint Counsel's First Set of Requests for Production of Documents in *In re Kroger Co.*, Docket No. 9428 (FTC May 2, 2024).

13. Attached to this declaration as Exhibit K is a true and correct copy of Kroger's May 24, 2024 Privilege Log in *In re Kroger Co.*, Docket No. 9428. Plaintiffs are unable to upload the native Excel file via ECF, but can provide the Court with an emailed copy if requested.

14. Attached to this declaration as Exhibit L is a true and correct copy of Albertsons' May 2, 2024 Responses and Objections to Complaint Counsel's First Set of Requests for Production of Documents in *In re Kroger Co.*, Docket No. 9428.

15. Attached to this declaration as Exhibit M is a true and correct copy of Albertsons' May 24, 2024 Privilege Log in *In re Kroger Co.*, Docket No. 9428. Plaintiffs are unable to upload the native Excel file via ECF, but can provide the Court with an emailed copy if requested.

16. Attached to this declaration as Exhibit N is a true and correct copy of a letter from S. Holley to K. Drummonds, dated April 11, 2024.

17. Attached to this declaration as Exhibit O is a true and correct copy of Complaint Counsel's Renewed Motion to Compel Kroger's Production of Documents Relating to Negotiation of New Divestiture Agreements in *In re Kroger Co.*, Docket No. 9428 (FTC May 29, 2024).

18. Attached to this declaration as Exhibit P is a true and correct copy of Excerpts of PX4105, Deposition of Yael Cosset (June 11, 2024).

19. Attached to this declaration as Exhibit Q is a true and correct copy of Excerpts of PX4094, Deposition of Yael Cosset (June 10, 2024).

20. Attached to this declaration as Exhibit R is a true and correct copy of Excerpts of PX4060, Deposition of Eric Winn (June 4, 2024).

21. Attached to this declaration as Exhibit S is a true and correct copy of Complaint Counsel's Motion to Strike Kroger's Sixth and Albertsons' Ninth Affirmative Defenses in *In re Kroger Co.*, Docket No. 9428 (FTC July 15, 2024).

22. Attached to this declaration as Exhibit T is a true and correct copy of Respondents' Opposition to Complaint Counsel's Motion to Strike in *In re Kroger Co.*, Docket No. 9428 (FTC July 25, 2024).

23. Attached to this declaration as Exhibit U is a true and correct copy of Exhibit PX3956, a document produced by C&S in this matter, bearing bates number CS-01847869.

24. Attached to this declaration as Exhibit V is a true and correct copy of Respondents' Pretrial Brief in *In re Kroger Co.*, Docket No. 9428 (FTC August 1, 2024).

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 14, 2024, in Washington, D.C.

/s/ Susan A. Musser

Susan A. Musser, DC Bar # 1531486  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Tel: (202) 326-2122  
*smusser@ftc.gov*

*Attorney for Plaintiff Federal Trade Commission*